IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 4503 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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DINUBHAI ALIAS MANHARBHAI JAYRAMBHAI HIRPARA

Versus

STATE OF GUJARAT

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Appearance:

1. Criminal Misc.Application No. 4503 of 2001

MR HM PRACHCHHAK for Petitioner No. 1-3

MR AD OZA PUBLIC PROSECUTOR for Respondent No. 1

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CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 10/07/2001

ORAL JUDGEMENT

1. Rule. Mr. A.D. Oza, learned Public Prosecutor waives service of Rule. By consent of learned advocates for the parties, this application is being heard and disposed of finally.

2. The petitioners abovenamed have preferred this application under Section 439 of Criminal Procedure Code, 1973 (for short "code") for enlargement on bail in CR. No. I-26/2001 registered before Sarkhej Police Station at Ahmedabad.

3. The allegations against the petitioners are that the petitioners had built certain buildings in 1997 and they were allotted to different persons. It is alleged that petitioners had constructed the said buildings by using defective materials. It is further alleged that the building was constructed by using the pit and on pillars. That on 26/1/2001 at about 8.40 a.m. there was massive earthquake, on account of which, many portions of the said building collapsed. As a result of which, many persons sustained injuries. That there was a tank in the compound at the level of 70 ft. and because of the collapse of said tank, there was great deal of damage to the remaining part of the building. Therefore, it is said that the petitioners had knowledge that the building is such, which would collapse and because of the collapse of the building, the persons staying in it would suffer grievous hurt. That thereby, the petitioners have caused injuries to those persons with aforesaid knowledge and therefore, they have committed an offence punishable under Section 308 of the Code and other offences under Indian Penal Code.

4. The petitioners say that they have not committed any offences and the building has collapsed only on account of earthquake and not on account of defective material or defective design and therefore, they have not committed any offence and therefore, they may be enlarged on bail. During the course of arguments, it transpires that petitioners have already received chargesheet since the I.O. has submitted in chargesheet before trial Court. The Chargesheet shows that offence punishable under Section 304 has not been levelled against the petitioners but the offence punishable under Section 308 of the I.P. Code has been levelled against them alongwith other offences mentioned in the chargesheet.

5. In above view of the matter, when the main offence is under Section 308 of the I.P. Code, it is clear that said offence is not punishable with imprisonment for life or death

6. It is a fact that builders and other offenders charged with offence punishable under Section 304 have already been released on bail. Moreover, the present petitioners have not been charged for the offences punishable under Section 304 of I.P.C. In above view of the matter, looking to the nature of the offence and looking the allegations made in the chargesheet against the petitioners and looking to the roll attributed to them, this is not a fit case, wherein, the petitioners should be detained in jail for a long time. The petitioners are in jail since long and looking to the aforesaid position, I am of the opinion that this is a fit case, wherein, discretion should be used in favour of the petitioners by granting bail.

7. In the facts and circumstances of the case, this petition is allowed. The petitioners are ordered to be released on bail on furnishing solvent surety and PR to the tune of Rs. 40,000/- each (Rs. Fourty thousand Only) each on following conditions.

CONDITIONS :

1. The petitioners shall not leave Ahmedabad City and Ahmedabad Rural District till completion and conclusion of the entire investigation and till the submission of final chargesheet against all the accused persons and till the apprehension and arrest of them without the express permission of the learned Sessions Judge, Ahmedabad (Rural) District at Mirzapur.

2. The petitioners shall not approach, contact, induce or threaten the witnesses connected with the offence in question.

3. The petitioners shall file an affidavit before the learned Sessions Judge, Ahmedabad (Rural) District, Ahmedabad showing the place of their residence after their release on bail which would contain details about full address and telephone numbers, if any.

4. The petitioners shall personally remain present on every 1st working day of the month according to British calendar before the learned Sessions Judge, Ahmedabad (Rural) District between 2 p.m. and 5 p.m. and mark their presence there. The learned Sessions Judge Ahmedabad (Rural) District shall make appropriate arrangement for obtaining

their signatures on their appearance.

5. The petitioners shall not leave Gujarat state without prior permission of the learned Sessions Judge, Ahmedabad (Rural) District, Ahmedabad.

6. The petitioners shall not leave the revenue district of the place of residence stated by them in their affidavits, without the permission of the learned Sessions Judge, Ahmedabad (Rural) District, Ahmedabad.

7. Petitioners shall deposit their passport, if any, before the concerned police Station before their release on bail. In case a petitioners does not hold any passport, then in that case, they shall file an affidavit before the learned Sessions Judge, Ahmedabad (Rural) District, Ahmedabad accordingly.

8. The learned Sessions Judge, Ahmedabad (Rural) District shall write Yadi to the Passport Office, Ahmedabad with respect to the aforesaid conditions imposed upon the petitioners restricting their movement and that they have not been permitted to visit abroad, for their information and action.

9. The petitioners, before their release on bail as aforesaid, shall deposit a sum of Rs. 40,000/each (Rs.Fourty Thousand only) each before the learned Sessions Judge, Ahmedabad (Rural) District for the due performance of the aforesaid conditions by the petitioners. The learned Sessions Judge Ahmedabad (Rural) District will be at liberty to place the said amount in FDR in the name of the officer of his Court at the instance of the petitioners.

10. If any one or more conditions are reported to have been breached by the petitioners, the learned Sessions Judge, Ahmedabad (Rural) District shall be at liberty to issue non-bailable warrant against the petitioners.

11. Bail Bond be executed before the learned Sessions Judge, Ahmedabad (Rural) District.

Rule is made absolute accordingly. D.S.

Permitted.

(D.P.Buch, J.)
pallav.

FURTHER ORDER :-

After pronouncement of the orders in all these group matters, learned Public Prosecutor Mr. A.D. Oza, appearing for the State has made a submission that the aforesaid orders releasing the petitioners on bail may be suspended for at least three weeks in order to enable the State to file appropriate proceedings before the higher forum. As against this, learned Advocate for the petitioners have strongly objected to it. Mr. Saurin Shah, arguing for the petitioners has argued that the Court has considered the pros and cons on merits and thereafter, the decision has been recorded and the petitioners have been ordered to be enlarged on bail. That therefore, if this Court now suspends its order, it would amount to reviewing its order, which is not technically permissible under the law, since the criminal law does not provide for review of the order of the Court. Mr. A.J. Patel, learned advocate appearing in a similar group of matters, has also contended that there is no reason for suspending the order of the Court. It is also his submission that even if there is discretion in the court for suspension of its order, it may not be used in favour of the State. Mr. Saurin Shah also argued that once the order is pronounced, it need not be stayed. Mr. N.S. Desai, learned advocate has also argued that the matter has been disposed of on merit and so far as his client is concerned, he is also sick. That he has also prayed for bail on the ground of sickness of the petitioner and, therefore, the order should not be stayed.

As against this, learned Public Prosecutor has relied upon a decision of this Court in the case of Gujarat Vs. Lalji Popat, reported in 1988 (2) GLR 1073.

On the basis of the said decision, it has been contended that when a court passes an order for enlargement of the accused persons on bail and if the State desires to file appropriate proceedings before the higher forum, then, the State can make a submission for the suspension of the order and the Court ordering the release of the accused persons on bail should consider the said request of the State for suspending the operation of the order passed. Therefore, there is a case law coming from this Court that the court passing order for enlargement of the accused on bail can and should suspend its order in case of necessity. Mr. A.D. Oza has also argued on behalf of the State that some builders have yet not been apprehended and they have been found absconding. It has also been argued by him that some pressures are brought on the occupants of the flats for settlement of their dispute with a view to avoid trial, arrest etc. on criminal side against them. It is also contended that other persons have also been absconding since last so many months and in that view of the matter, with a view to avoid any further complication, the prayer is that the order releasing the petitioners on bail be suspended at least for three weeks so that during the said period, the State can move appropriate forum for appropriate relief.

Having regard to the aforesaid submissions made on behalf of the learned Advocates for the parties and considering the aforesaid case law, I am of the view that though the petitioners are in jail for about 4 months, it would be just and proper to give some time even to the State for taking appropriate steps before appropriate authority. Time is sought for a period of three weeks praying to suspend the order as aforesaid upto 20.7.2001. Accordingly, time is granted upto 12.7.2001. Naturally, if no order is received from or passed by the superior forum, the aforesaid order will be operative with effect from 13.7.2001.

(D.P. Buch, J.)
pallav